

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROCKETFUEL BLOCKCHAIN, INC., a
Nevada corporation; and ROCKETFUEL
BLOCKCHAIN COMPANY, a Nevada
corporation,

Plaintiffs,

v.

JOSEPH PAGE, and individual; and DOES 1
THROUGH 10, inclusive,

Defendants.

Case No. 2:21-cv-00103-KJD-EJY

**ORDER GRANTING CROSS-
DEFENDANTS' MOTION TO DISMISS**

Before the Court are Cross-Defendants' Motions to Dismiss Crossclaims (ECF #50/56/61). Cross-Claimant responded in opposition (ECF #54/58/61) and Cross-Defendant replied (ECF #55/64/65). Cross-Claimant also filed a Motion for Default Judgment (ECF #59).

I. Factual and Procedural Background

Plaintiff Rocketfuel Blockchain, Inc. ("Rocketfuel") brought this action against Defendant Joseph Page ("Page") for his alleged securities violations in the Central District of California. (ECF #50, at 2). The parties then stipulated to transfer the case to the District of Nevada. (ECF #20). Page filed a counterclaim against Plaintiffs and a crossclaim against other parties, alleging fraud, negligent misrepresentation, and unjust enrichment, and requested declaratory judgment and injunctive relief. (ECF #18). Cross-Defendants Bennet J. Yankowitz ("Yankowitz"), Henrik Rouf ("Rouf"), and PacificWave Partners Limited ("PacificWave") have not answered the cross complaint, did not participate in the stipulation to transfer, and filed the instant motions to dismiss. (ECF #50/56/61). Yankowitz and Rouf argue that this Court does not have personal jurisdiction over them, and that Page failed to properly serve them. PacificWave argues that Page did not properly execute service. Each asks the Court to dismiss the crossclaim

1 against them.

2 II. Legal Standard

3 Under Federal Rule of Civil Procedure 12(b)(2) a party may move to dismiss a cause of
 4 action for lack of personal jurisdiction. FED. R. CIV. P 12(b)(2). When a defendant makes such a
 5 motion, “the plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”
 6 Schwarzenegger v. Fred Martin Motor. Co., 374 F.3d 797, 800 (9th Cir. 2004). Personal
 7 jurisdiction requires that non-resident defendants must have “minimum contacts” with the forum
 8 so as to “not offend traditional notions of fair play and substantial justice.” Int’l Shoe Co. v.
 9 Washington, 326 U.S. 310, 316 (1945). Personal jurisdiction can be either general or specific.
 10 “To establish general jurisdiction, the plaintiff must demonstrate that the defendant has sufficient
 11 contacts to ‘constitute the kind of continuous and systematic general business contacts that
 12 approximate physical presence.’” In re Western States Wholesale Natural Gas Antitrust
 13 Litigation, 715 F.3d 716, 741 (9th Cir. 2013) (quoting Glencore Grain Rotterdam B.V. v.
 14 Shivnath Rai Harnarain Co., 284 F.3d 1114, 1124 (9th Cir. 2002)). To determine if specific
 15 jurisdiction exists, courts use a three-prong test:

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 17 (1) The non-resident must purposefully direct his activities or consummate some
 18 transaction with the forum or resident thereof; or perform some act by which he
 19 purposefully avails himself of the privilege of conducting activities in the forum,
 20 thereby invoking the benefits and protections of its laws; (2) the claim must be
 21 one which arises out of or relates to the defendant’s forum-related activities; and
 22 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
 23 i.e., it must be reasonable.

24 Schwarzenegger, 374 F.3d at 802. The plaintiff bears the burden of proving the first two prongs,
 25 and if he fails, “personal jurisdiction is not established.” Id. If a plaintiff succeeds, “the burden
 26 then shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would
 27 not be reasonable.” Id. (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476–78 (1985)).

28 A party may also move to dismiss for insufficient service of process. FED. R. CIV. P.
 12(b)(5). “Defendants must be served in accordance with Rule 4(d) of the Federal Rules of Civil
 Procedure, or there is no personal jurisdiction.” Jackson v. Hayakawa, 682 F.2d 1344, 1347 (9th

1 Cir. 1982). Defendants must be “personally served or served in compliance with alternatives
 2 listed” in 4(e). Id. “Neither actual notice nor simply naming the person in the caption of the
 3 complaint will subject defendants to personal jurisdiction if service was not made in substantial
 4 compliance with Rule 4.” Id.

5 III. Analysis

6 The Court construes a *pro se* motion liberally. Erickson v. Pardus, 551 U.S. 89, 94 (2007)
 7 (“A document filed *pro se* is to be liberally construed . . .”). However, the Court “lacks the
 8 power to act as a party’s lawyer, even for *pro se* litigants.” Bias v. Moynihan, 508 F.3d 1212,
 9 1219 (9th Cir. 2007). Page chose to represent himself and brought his crossclaims against
 10 Yankowitz, Rouf, and PacificWave after Rocketfuel sued him. Yankowitz and Rouf argue that
 11 this Court lacks personal jurisdiction and that page failed to serve them. PacificWave only argues
 12 that Page failed to effectuate proper service.

13 A. Personal Jurisdiction

14 General jurisdiction is not present for either Yankowitz or Rouf as both are residents of
 15 California. “For an individual, the paradigm forum for the exercise of general jurisdiction is the
 16 individual’s domicile.” Daimler AG v. Bauman, 571 U.S. 117, 137 (2014) (quoting Goodyear
 17 Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011)). To establish general
 18 jurisdiction for out-of-state corporations, courts look at the business contacts to determine if they
 19 establish approximate physical presence. However, Yankowitz and Rouf are individuals who live
 20 outside the forum and general jurisdiction does not apply. As such, specific jurisdiction must
 21 exist. Specific jurisdiction looks at the party’s contacts. The Schwarzenegger three-prong test
 22 shows that the Court does not have jurisdiction over Yankowitz or Rouf. Page argues that
 23 Yankowitz has sufficient contacts with Nevada because he works at a law firm that solicits
 24 clients from Nevada, was involved in CoConnect and B4MC Gold Mines, two Nevada
 25 corporations, is the director of Rocketfuel, a Nevada corporation, and drafted a forum selection
 26 clause for Rocketfuel, identifying Nevada as the proper forum for lawsuits against the company.
 27 Yankowitz has availed himself to the benefits and protections of Nevada law. However, Page has
 28 not shown how his claim arises out of or relates to Yankowitz’s forum-related activities.

1 Schwarzenegger, 374 F.3d at 802. Page’s crossclaim brings claims against Yankowitz for his
 2 alleged failure to procure funding for Rocketfuel. Page’s complaint alleges that Yankowitz
 3 “boasted of his ability to introduce the project and technology to rich Californians in the Los
 4 Angeles investment community” and “would be able to arrange important introductory meetings
 5 with powerful Silicon Valley [venture capitalists] as well as rich private investors in Los
 6 Angeles.” (ECF #18, at 27, 32). Page’s allegations do not relate to Yankowitz’s forum-related
 7 activities. His positions working with other Nevada corporations uninvolved in this litigation are
 8 irrelevant and his law firm’s other business in Nevada does not give this court personal
 9 jurisdiction over him. As such, Page has failed to meet his burden to establish personal
 10 jurisdiction over Yankowitz in Nevada.

11 The same holds true for Rouf. Page’s cross-complaint alleges that his meetings with Rouf
 12 took place in Europe (ECF #18, at 10), that Rouf boasted about his connections with California
 13 investors (ECF #18, at 7, 8, 23, 27, & 32), and that Rouf formed a strategy “for the company to
 14 approach [venture capitalists] in California.” (ECF #18, at 13). The complaint does not mention a
 15 single connection between Rouf and Nevada besides Rocketfuel being a Nevada corporation.
 16 Rouf is not alleged to work for Rocketfuel, only to have sought investors. Page has not shown
 17 that Rouf purposely directed his activities or purposefully availed himself to Nevada.

18 Schwarzenegger, 374 F.3d at 802. Therefore, the Court lacks personal jurisdiction over Rouf.

19 Because the Court lacks personal jurisdiction over Yankowitz and Rouf, the motion to
 20 dismiss is granted.

21 B. Failure to Effectuate Proper Service

22 A party must be served pursuant to Federal Rule of Civil Procedure 4. The rule permits
 23 service by

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- 25 (a) delivering a copy of the summons and of the complaint to the individual
 - 26 personally; (b) leaving a copy of each at the individual’s dwelling or usual place
 - 27 of abode with someone of suitable age and discretion who resides there; or (c)
 - 28 delivering a copy of each to an agent authorized by appointment or by law to
- receive service of process.

Fed. R. Civ. P. 4(e)(2). A party may also follow the state law for service in the state where the

1 claim is made. Id. at 4(e)(1). The Nevada rules of service mimic the federal rules but California,
2 where this action originated, has narrower rules. California requires personal service on the
3 individual or the individual's authorized agent. Am. Express Centurion Bank v. Zara, 199 Cal.
4 App. 4th 383, 389 (2011). Here, Page argues that service was proper and included an affidavit
5 from his process server to substantiate his argument. Service to Yankowitz was delivered to one
6 of his law firm's offices. The receptionist there called Davida Goldman ("Goldman"), the
7 administrator at the office location in which Yankowitz worked, to inform Goldman that there
8 was a process server there. The receptionist told Goldman that the process server was there to
9 serve someone at Shumaker Mallory, the firm Yankowitz works for. Because some of the
10 attorneys are agents for service of process for some of the firm's clients, Goldman told the
11 receptionist to send her the papers. Upon receiving the papers, Goldman realized that the papers
12 were intended for Yankowitz in his individual capacity, not any of the clients. Yankowitz was
13 never personally served, and Goldman was not an agent authorized to accept service on his
14 behalf.

15 Rouf was not personally served either. Page's proof of service states that "Henrik Roug
16 [sic] was served at his residence or usual place of abode with a copy of the summons delivered to
17 Sharnel Parkins—Manager." (ECF #56, at 10). However, the address listed is not Rouf's
18 residence, it is the address for the law firm Shumaker Mallory, counsel for Plaintiff. There is no
19 one employed by Shumaker Mallory named Sharnel Parkins ("Parkins") and neither the
20 management company nor landlord of the office know who Parkins is. Page's process server also
21 attempted to serve PacificWave by delivering the papers to Parkins, but Parkins is not
22 PacificWave's registered agent either. Page argues that because PacificWave provided the
23 Shumaker Mallory address for purposes of Rule 5 service, and Page's process server left the
24 complaint and summons at that address, service is proper. However, Rule 5 governs service of
25 documents after the initial complaint and summons. Page was required to effectuate proper
26 service under Rule 4 but failed to do so. The cross-defendants have not been personally served or
27 received service through their registered agents. As such, dismissal is proper for insufficient
28 service of process.

1 C. Motion for Default Judgment


2 Page's motion for default judgment must also be denied. Page filed the motion seeking
3 default judgment because PacificWave had not responded to the cross-complaint. However, as
4 the Court has found, PacificWave was not properly served. The deadline to file an answer or
5 make an appearance does not begin until service is properly effectuated. An answer must be filed
6 "within 21 days after being served with the summons and complaint." FED. R. CIV. P.
7 12(a)(1)(A). Because Page did not effectuate proper service, the deadline has not begun and
8 PacificWave has not missed it. Therefore, Page's motion for default judgment is denied.

9 IV. Conclusion

10 Accordingly, IT IS HEREBY ORDERED that Cross-Defendants' Motions to Dismiss
11 (ECF #50/56/61) are **GRANTED**.

12 IT IS FURTHER ORDERED that Cross-Claimant's Motion for Default Judgment (ECF
13 #59) is **DENIED**.

14 Dated this 30th day of November, 2021.

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17 Kent J. Dawson
18 United States District Judge
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